

LOUISIANA ATTORNEY DISCIPLINARY BOARD

HEARING COMMITTEE NO. ____

IN RE: TIMOTHY DAVID RAY

(ODC 0037530)

FORMAL CHARGES

NOW INTO THIS PROCEEDING, through undersigned Deputy Disciplinary Counsel, comes the Office of Disciplinary Counsel ("ODC") to charge that **TIMOTHY DAVID RAY** ("Respondent") is guilty of professional misconduct warranting the imposition of discipline for the reasons set forth below.

General Background

1.

Respondent is a Louisiana-licensed attorney born in 1982. Respondent was admitted to practice law in Louisiana on October 20, 2016 under Louisiana Bar Roll Number 37269. Respondent currently is eligible to practice law in the State of Louisiana.

2.

In compliance with Louisiana Supreme Court Rule XIX, Sections 3E(1) and 11B(3), the ODC obtained permission to file these formal charges, thus establishing probable cause to believe that a violation or attempted violation of the Louisiana Rules of Professional Conduct ("Rules")

has occurred or that there are grounds for lawyer discipline pursuant to Louisiana Supreme Court Rule XIX, Section 9.

3.

On March 19, 2019, the ODC received a complaint ("Complaint") regarding Respondent. The Complaint was sent by Paulette R. Irons (Chief Judge of Civil District Court, Parish of Orleans) ("Judge Irons"), Angelique A. Reed (Senior Judge of First City Court, Parish of Orleans) ("Judge Reed") and Austin Badon (Clerk of First City Court, Parish of Orleans) ("Mr. Badon"). Attached thereto was a copy of a Fraud Examination Report ("Fraud Report") commissioned by the Judicial Expense Fund for Orleans Parish Civil District Court ("JEF") and prepared by Brown Forensic Accounting ("BFA"). On March 19, 2019, BFA sent the ODC supplemental information related to the Complaint. The Complaint was opened for investigation as ODC 0037530.

4.

On March 26, 2019, the ODC sent a letter discussing the Complaint allegations to Respondent via certified mail (return receipt requested) to his Louisiana State Bar Association ("LSBA") secondary/preferred bar registration address of [REDACTED] New Orleans, Louisiana 70125. On April 6, 2019, delivery of the same was accepted on Respondent's behalf.

5.

On April 2, 2019, the ODC sent Judge Irons a letter to request additional information regarding the Complaint. On April 8, 2019, Traci Dias ("Ms. Dias"), Judicial Administrator for the JEF, sent an email to the ODC which attached a photograph of the information requested.

6.

The ODC granted Respondent an extension of time, until May 6, 2019, to respond to the Complaint. On May 14, 2019, the ODC received Respondent's response to the Complaint.

7.

On May 8, 2019, the ODC took the sworn statement of witness Merlin Flores, Sr. regarding certain Complaint allegations. On June 3, 2019, the ODC took Respondent's sworn statement.

Respondent's Tenure as Interim Clerk, First City Court

8.

From March 20, 2000 through April 24, 2018, Ellen Hazeur ("Ms. Hazeur" or "Judge Hazeur") served as Clerk for First City Court. On March 24, 2018, Ms. Hazeur won an open Civil District Court judgeship in the Parish of Orleans. Shortly before her resignation as Clerk, Ms. Hazeur appointed Respondent, who had served as her judgeship campaign manager, as her Chief Deputy Clerk. Respondent then assumed the role of interim Clerk for First City Court upon Ms. Hazeur's resignation, which went into effect at the close of business on April 24, 2018.

9.

On or around July 18, 2018, while serving as interim Clerk, Respondent filed to run for Clerk of First City Court in a special election to fill the vacancy left by now-Judge Hazeur. On November 6, 2018, Respondent lost that special election to Mr. Badon. On November 16, 2018, Mr. Badon was sworn into office. Thus, Respondent served as interim Clerk of First City Court for less than seven months, from April 25, 2018 through November 16, 2018.

Capital Improvement Fund Account of the Clerk, First City Court

10.

During the relevant timeframe, interest earned on fiduciary funds collected by First City Court (*e.g.*, deposits for issuance of writs of garnishment and funds ordered by the Court to be held on deposit until judgment has been rendered) was transferred and held in a separate Capital Improvement Fund checking account ("CIF Account") with Liberty Bank in New Orleans. During his tenure as interim Clerk of First City Court, Respondent had access to, and the ability to write checks on, the CIF Account.

11.

On April 25, 2018, when Respondent became interim Clerk, the balance in the CIF Account was \$44,872.35. On November 16, 2018, when Mr. Badon was sworn in as Clerk of First City Court, the balance in the CIF Account had been reduced to \$35,515.17 as a result of three checks written on that account by Respondent in his final two weeks in office as interim Clerk. On December 3, 2018, Mr. Badon sent a memorandum to Judge Irons, Judge Reed and Ms. Dias which expressed concerns about Respondent's issuance of those checks written on the CIF Account. Two of those checks, made payable to Merlin Flores, Sr. ("Mr. Flores") and Morgan Jones ("Mr. Jones"), are the subject of these formal charges.

CIF Account Check to Mr. Flores

12.

On November 2, 2018, Respondent wrote a check out of the CIF Account for \$4,766.00 payable to Mr. Flores for "New shelves" ("Flores Check"). Mr. Flores is a personal friend of Respondent. The Flores Check was negotiated in person by Mr. Flores on November 5, 2018, the day before the special election for Clerk of First City Court. An invoice submitted by Mr. Flores ("Flores Invoice") to Respondent states that the Flores Check purportedly was to pay for the cost of an "initial consultation" (\$1,589.00) and "refitting of existing shelving" (\$3,178.00) at First City Court. Mr. Flores did not refit any existing shelving at First City Court.

13.

In a December 2, 2018 letter to Judge Irons, in response to questions Judge Irons had raised regarding his issuance of checks out of the CIF Account, Respondent represented, in pertinent part:

Subsequently, I entered into an agreement to both retrofit our current shelving in the rear room to allow 2019 records to be filed there, and to construct new shelving in the same space on a "rush" (invoice is attached).

* * * *

A payment in the amount of \$4,767 is all that was paid for the initial work. Most of the work on shelving took place and was planned to take place outside of normal work hours to reduce disruption, so those off-peak costs were included as well.

14.

In a December 10, 2018 email to Judge Irons and others, Respondent further represented, in pertinent part:

[Mr. Flores] was paid \$4,767 for his initial surveys and the very short time frame for both phases to be completed. Additionally, the shelving to the immediate right

after entering the doorway is prepared for the updated records, should the new clerk use them.

In addition to initial work and payment to secure urgent service, Mr. Flores completed repairs and retrofitted the existing shelves and they are already prepared for 2019 records – I personally checked them and know that they will fit.

15.

Respondent's representations to Judge Irons and others – that Mr. Flores had completed "work on shelving," "prepared" shelving "for the updated records," and "completed repairs and retrofitted the existing shelves" in the Clerk's Office at First City Court – were false.

16.

During his sworn statement, Mr. Flores testified that he performed none of those tasks. Mr. Flores further testified that he wrote in the handwritten description of "initial consultation" (\$1,589.00) and "refitting of existing shelving" (\$3,178.00) on the Flores Invoice only after speaking with Respondent about those descriptions; he had previously never charged such a large "initial consultation" fee for proposed work; and he had no licenses or permits to perform construction-related work.

17.

During his sworn statement, Respondent also admitted that Mr. Flores performed none of those tasks. Respondent further testified that he did not receive the Flores Invoice until after Judge Irons later requested a copy of the same, and he could no longer locate the original Flores Invoice.

18.

In addition to making false representations regarding work not performed by Mr. Flores, Respondent's payment of \$1,589.00 to his personal friend, Mr. Flores, for a one-time visit to take shelving measurements at First City Court, and Respondent's payment of an additional \$3,178.00 to Mr. Flores for shelving work not performed by him, was a gross misuse of public funds held in the CIF Account.

19.

On or about February 27, 2019, news reporter Lee Zurik ("Mr. Zurik") published a report regarding Respondent's issuance of checks written on the CIF Account to Mr. Flores and Mr. Jones. As part of that report, Mr. Zurik conducted a phone interview of Mr. Flores, wherein Mr. Flores similarly admitted that he performed none of those tasks at First City Court as had been represented by Respondent.

20.

On March 4, 2019, Mr. Flores wrote a letter to Ms. Dias which stated, in pertinent part: "[A]fter viewing the report by Fox news, I do not want to be apart [sic] of any political gamesmanship.... I have requested my bank to send a cashier's check in the amount of \$3,178 to refund the court and am severing all business ties with First City Court."

21.

On March 12, 2019, a cashier's check in the amount of \$3,000.00, made payable to the JEF, was issued by Mr. Flore's bank. Mr. Flores gave that cashier's check to Respondent for delivery to First City Court. Respondent testified that he had his law firm runner deliver Mr.

Flore's cashier's check, along with \$1,767.00 in cash (which represented the difference between the amount of Mr. Flore's \$3,000.00 cashier's check and the \$4,766.00 Flores Check written out of the CIF Account, plus \$1.00), in an envelope to First City Court. Respondent testified that he personally came up with the cash funds included in that envelope.

CIF Account Check to Mr. Jones

22.

On November 13, 2018, one week after losing the special election and three days prior to leaving office as interim Clerk, Respondent wrote a check out of the CIF Account for \$5,250.00 payable to Mr. Jones for "labor, reimbursement, services" ("Jones Check"). Mr. Jones also is a personal friend of Respondent. The Jones Check was subsequently negotiated in person by Mr. Jones. An invoice submitted by Mr. Jones ("Jones Invoice") to Respondent indicates that the Jones Check was to pay for packaging and delivery of First City Court records to an offsite-storage facility.

23.

Since at least 2014, First City Court has used an offsite-storage company, Vital Records Control ("VRC") (formerly known as RecordMax New Orleans, LLC), to warehouse older records of First City Court.

24.

In a December 3, 2018 email to Judge Irons, in response to questions Judge Irons had raised, Respondent stated that the Jones Check concerned the "packing, cataloging and

transportation” of sixty-one (61) boxes of First City Court records to VRC. In his response to the Complaint, Respondent further represented:

I had the work done at the same cost VRC charged per case record (in/out), however I capped the cost not to exceed \$5,000.... [D]ue to the Civil Courts Building only have one barely functioning elevator for most of 2018, the work exceeded the agreed upon window by more than two hours and an additional \$250 was paid to show a desire to compensate for the unforeseen added length of the work.

25.

Respondent acknowledged during his sworn statement that the standard procedure to request payment of expenses associated with offsite delivery and storage of First City Court records with VRC was submission of invoices to the JEF for approval. Respondent did not follow that standard procedure when he issued the Jones Check out of the CIF Account. Respondent also acknowledged that the standard procedure was for Clerk’s Office employees, at no additional cost, to package and catalogue files in boxes for pick-up and delivery to offsite storage. Respondent similarly did not follow that standard procedure here.

26.

There was no exigent need for First City Court records to be delivered to offsite storage during Respondent’s final days as interim Clerk.

27.

On June 5, 2019, Mr. Badon, current Clerk of First City Court, sent a letter to VRC to request a cost estimate for VRC to pick up and store fifty-two (52) boxes of records at its offsite warehouse. Later that same day, VRC Area Vice President, Wes Gentles, sent Mr. Badon an email reply which stated, in pertinent part:

Presently VRC has boxes in storage for First City Court and pricing set up as follows which should address the questions in your letter:

Initial pick up / set up / access in - \$3.70 per box
Pick up / delivery fee - \$12.00 (total – not per box)

Total cost if VRC only has to pick up and process into our facility - \$204.40 ((52 * \$3.70) + \$12.00)

If indexing of files is required (VRC to go through each box and detail file name / number / id) then there would be an additional file level fee of \$0.25 per file in each box indexed. If indexing is not required then no cost here....

VRC is able to pick up these boxes later this week or early next [week] at your convenience. My expectation is that our lead time in November 2018 should have been similar to now....

28.

Respondent testified during his sworn statement that approximately 9,000 files were included in sixty-one (61) boxes delivered by Mr. Jones to VRC in November 2018. According to VRC's cost estimate, and as established by the terms of the parties' Agreement for Information Storage and Management Services (Schedule A), it would have cost First City Court the sum of \$237.70 ((61 x \$3.70) + \$12.00) for VRC to pick up and deliver that number of boxes to its offsite storage facility, or an additional sum of \$2,250.00 (9,000 x. \$0.25) for VRC to also index 9,000 files purportedly included in such boxes.

29.

Respondent's representation that he had "the work done at the same cost VRC charged per case record (in/out)" was false. Respondent's payment of \$5,250.00 to his personal friend, when VRC would have charged First City Court as little \$237.50, to around a maximum of \$2,487.50

(\$237.70 + \$2,250.00), for the same work, was a gross misuse of public funds held in the CIF Account. In addition, Mr. Badon states that this work is “not an allowable expenditure from Capital Improvement as defined by IRS Code.”

30.

During his sworn statement, Respondent further testified that: Mr. Jones has no prior moving company experience, but instead works at an Apple store; Respondent did not solicit any bids for the work to be performed; and Respondent did not receive the Jones Invoice until after Judge Irons later requested a copy of the same.

31.

On April 2, 2019, the ODC issued a subpoena/subpoena duces tecum (“Subpoena”) to Mr. Jones for the production of documents and to take his sworn statement. Mr. Jones has avoided service of the Subpoena and told the ODC’s Staff Investigator: “I don’t want to be a part of this.”

32.

The ODC respectfully submits that there is clear and convincing evidence that Respondent has violated Rule 3.3(a)(1) (candor to the tribunal), as well as Rule 8.4(a) (violate or attempt to violate the Rules), (c) (conduct involving dishonesty, fraud, deceit or misrepresentation) and (d) (conduct that is prejudicial to the administration of justice).

WHEREFORE, the ODC prays that Respondent, TIMOTHY DAVID RAY, Louisiana Bar Roll number 37269, be served with a copy of these formal charges and be cited to answer the same within the legal delays provided by Louisiana Supreme Court Rule XIX, Section 11E(3) and, after the lapse of all appropriate delays and due proceedings had, that there be a finding of professional

misconduct as outlined above and that appropriate discipline be imposed with Respondent cast for all costs associated with this proceeding.

Respectfully submitted:

OFFICE OF DISCIPLINARY COUNSEL



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July 24, 2019

**Please serve Respondent at
his LSBA-registered
primary and secondary/
preferred addresses:**



and



APPENDIX OF ALLEGED RULE VIOLATIONS

Rule 3.3 Candor Toward the Tribunal

- (a) A lawyer shall not knowingly:
- (1) make a false statement of fact or law to a tribunal or fail to correct a false statement of material fact or law previously made to the tribunal by the lawyer[.]

Rule 8.4 Misconduct

It is professional misconduct for a lawyer to:

- (a) Violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another;
- * * *
- (c) Engage in conduct involving dishonesty, fraud, deceit or misrepresentation; [or]
- (d) Engage in conduct that is prejudicial to the administration of justice[.]